

REMARKS/ARGUMENTS

The above identified patent application has been amended and reconsideration and allowance are hereby requested.

Claims 1 and 3-9 are now in the application with claims 7-9 being withdrawn from consideration. Claim 2 is cancelled. Claims 1 and 3-6 have been amended for antecedent basis, but not for patentability reasons.

The Examiner has rejected claims 1, 4 and 5 under 35 U.S.C. §103(a) as allegedly being obvious over Van der Wal (US 3,950,203) in view of Olesky (US 5,447,009) and Admitted Prior Art (APA), claim 3 as allegedly being obvious over Van der Wal in view of Olesky, APA and Odenthal (US 5,735,104), and claim 6 as allegedly being obvious over Van der Wal in view of Olesky, APA and Odenthal (US 5,551,212).

Claim 1 recites, in part (underlining added for emphasis): "the band clamping and guiding means further are arranged for applying simultaneously the band of the strap type and the band of the film type one above the other around the one or more packets . . . wherein the at least two bands comprise a band of the strap type and a band of the film type and wherein the band clamping and guiding means and welding means include a first group of band clamping and guiding means having a first pair of welding and clamping jaws arranged for the band of the strap type and a second group of band clamping and guiding means having a second pair of welding and clamping jaws arranged for the band of the film type, which groups are arranged one above the other."

The Examiner states that Van der Wal discloses supply reels, wherein "[e]ach supply reel is capable of holding different types of tape, such as metal, another fusible material, or non-fusible material . . . Note that Van der Wal's device is capable of applying two different types (metal, non-fusible, etc.) simultaneously" Office action, p. 3, emphasis added.

While Van der Wal may broadly disclose the possibility of different types of tape (metal, fusible, non-fusible) being used in the supply reels, Van der Wal does not teach or suggest using two different types of tape in the supply reels simultaneously nor different types of clamping and

guiding means and welding means arranged for different types of tape simultaneously. Rather, as shown and described, a single type of tape is used in all four tape supply reels 6, as shown in FIG. 1, and such tape is able to be clamped by a single type of tape strainer 8. Accordingly, Van der Wal does not teach "wherein the at least two bands comprise a band of the strap type and a band of the film type and wherein the band clamping and guiding means and welding means include a first group of band clamping and guiding means having a first pair of welding and clamping jaws arranged for the band of the strap type and a second group of band clamping and guiding means having a second pair of welding and clamping jaws arranged for the band of the film type, which groups are arranged one above the other." Additionally, Olesky does not make up for this deficiency of Van der Wal.

The Examiner also states that "Olesky teaches wrapping packets with film bands 16a-16e for the purpose of improving the cohesiveness of the packets while allowing the packets to breathe, for example with food packets. There, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide film as a band type in Van der Wal's device for the purpose of improving the cohesiveness of the packets, while allowing the packets to breathe." Office action, p. 4. Applicant respectfully traverses the Examiner's rejection.

As the Examiner is aware, a prior art reference must be considered in its entirety, i.e., as a whole including portions that would lead away from the claimed invention. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, (Fed. Cir. 1983), *cert denied*, 469 U.S. 851 (1984) (emphasis in original); MPEP 2141.03(VI).

On the one hand, Van der Wal teaches that "the tape 9 is applied in the form of a U around a stack of objects 10 in the manner shown in FIG. 1" Col. 4:16-18. On the other hand, Olesky teaches that a "[w]rapping machine 10 is then actuated in order that turntable 20, along with clamp 21 . . . begins to rotate about vertical axis 23. . . Load 11 and turntable 20 continue to rotate about axis 23 as plastic film 16 is dispensed from film carriage 15 to apply lateral strips or bands of film to the load. Accordingly, Olesky teaches away from being combined with Van der Wal because the clamping means taught by Van der Wal requiring a U-shaped tape configuration would not be compatible with a turntable for wrapping tape multiple times around a load 11.

However, even if Olesky were relied on solely for teaching a "film type band," which it cannot be because the entirety of the teaching of the reference must be taken into account, the teaching of the film type band does not make a difference. As noted above, Van der Wal teaches only that a single type of film may be used simultaneously and no where does Van der Wal teach or suggest using two separate types of film simultaneously.

In addition to the references' lack of teaching of all of the limitations of claim 1 and the teaching away of Olesky from being combined with Van der Wal, impermissible hindsight must be avoided and the legal conclusion of obviousness must be reached on the basis of the facts gleaned from the prior art. *See MPEP 2142*.

It is well known that a band of the strap type and a band of the film type require very different sealing processes and a different tensioning. Machines for arranging a band of the strap type have been known for more than 30 years. Machines for arranging a band of the film type have been known for more than 50 years. However, until the invention of the present application, no machine existed for arranging both a band of the strap type and a band of the film type around a packet with a single machine.

Although with the benefit of hindsight in view of the Applicant's claim, disclosure and drawings it may be possible to "see" the Applicant's invention by combining the film type wrapping of Olesky with the device of Van der Wal even though each reference discloses using only a single type of band at one time. However, the Examiner is not permitted to use hindsight to reach the legal conclusion that a device for arranging at least two bands around one or more packets simultaneously as claimed in claim 1 is obvious over a device for applying a single type of tape around an object in the form of a U in view of an apparatus for applying a single type of film completely around an object using a turntable. Quite simply, neither reference discloses using two types of film simultaneously.

The above-cited limitations as claimed in claim 1 are not present in the Van der Wal, APA and Olesky references. Further, there is no apparent reason why one skilled in the art at the time the invention was made would have combined Van der Wal and Olesky and APA to arrive at the claimed invention. Additionally, neither the '104 Odenthal nor the '212 Odenthal

Appln No. 10/533,348
Amdt date June 2, 2009
Reply to Office action of March 5, 2009

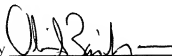
references make up for the deficiencies of Van der Wal, APA and Olesky. Accordingly, the invention claimed in claim 1 is patentable over Van der Wal in view of Olesky, APA, '104 Odenthal and '212 Odenthal. Claims 3-6 are dependent on claim 1. As such, these claims are allowable based on claim 1 for at least the reasons above and for the additional limitations they contain.

In view of the above amendments and remarks, the claims are patentably distinct over the prior art of record and all of the rejections of the claims have been overcome. As such, allowance of the above Application is requested.

The Examiner is invited to call Applicant's attorney at the number listed below if there are any remaining issues that can be addressed over the telephone.

Respectfully submitted,
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